

## TEXT OF REGULATIONS

### California Code of Regulations Title 25, Division 1, Chapter 7 Proposed Amendments to Subchapter 17

**Amend Section 8204 as follows:**

**§ 8204. Eligible Applicant.**

(a) In order to be eligible to apply for HOME funds, the applicant shall be a city or county, or a nonprofit corporation that has been certified as a CHDO by the Department pursuant to Section 8204.1.

(1) Cities and counties shall comply with the following:

- (A) A city may only apply for funding for activities within its incorporated boundaries;
- (B) A county may only apply for funding for activities within its unincorporated areas;
- (C) A city or county applicant shall not have been designated as a participating jurisdiction, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding for the federal fiscal year for which the NOFA is issued, and
- (D) A city or county applicant must demonstrate to the Department's satisfaction that it has:
  - (i) staff available or has committed to hiring staff able to operate a local HOME program and oversee the work of an administrative subcontractor, if any, and
  - (ii) resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,
  - (iii) provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and
  - (iv) provided a self certification documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report

(2) A CHDO applicant shall comply with the following:

- (A) have received the Department's certification to serve the jurisdiction in which the project is located;
- (B) be eligible to apply for activities located in cities and counties which have not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and

(C) The CHDO must demonstrate to the Department's satisfaction that it has:

- (i) resolved any audit findings for prior Department or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,
- (ii) provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and
- (iii) provided ~~a self certification~~ documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report; and

(D) provide evidence that the CHDO fulfills at least one of the following roles:

- (i) sole project developer;
- (ii) sole owner; or
- (iii) sole general partner.

- (b) An applicant with one or more current State HOME contracts for which the expenditure deadline established in the contract(s) has not yet passed shall be ineligible to apply for a program activity unless the applicant has expended at least fifty percent (50%) of the aggregate total of program funds originally awarded.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code Reference: 24 CFR Sections 92.201(b) (3) (i), 92.300(b) and 92.504(a); and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Amend Section 8207 as follows:**

**§ 8207. Amount of HOME Assistance.**

(a) The amount of HOME funds invested in a project:

- (1) shall not exceed the per unit dollar limits established by HUD under 24 CFR Section 92.250; and

- (2) is limited to the amount necessary, when considered with other financing and assistance, of the project, to accomplish the following:
- (A) enable the project as proposed to be developed and to operate in compliance with all HOME requirements;
  - (B) for first-time homebuyer projects and programs, allow homebuyers to purchase homes utilizing loans from primary lenders. (Notice: First-time homebuyers shall be required to obtain financing from primary lenders in addition to HOME financing.) Loans from primary lenders shall comply with the following requirements:
    - (i) the loan must have a minimum loan term of 30 years term, ~~except for US Department of Agriculture Rural Housing Service 502 loans, which may have terms of 33 or 38 years;~~
    - (ii) the loan must be fully amortizing and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the NOFA. No temporary interest rate buy-downs are permitted;
- (b) A recipient of a conditional reservation for a rental project shall be required to submit an updated sources and uses and an operating budget within 15 days of obtaining permanent financing commitments and at least 45 days prior to the date of anticipated construction or acquisition loan closing. The Department shall conduct a feasibility analysis and subsidy layering analysis. If the project is determined to be feasible, a final funding amount will be set based upon the subsidy layering analysis.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.205(c) and 92.250; and Sections 50896 and 50896.1, Health and Safety Code.

**Add Section 8207.1 as follows:**

**§ 8207.1. Homebuyer Education Requirements.**

- (a) For purposes of this section, “homebuyer education” means a specific course of instruction, designed pursuant to this section, to educate first-time homebuyers regarding various aspects of purchasing and maintaining a home.
- (b) Homebuyer education shall be provided to all homebuyers receiving HOME funds for mortgage assistance.
- (c) The homebuyer education curriculum shall be pre-approved by the Department and at a minimum, shall include the following topics:
  - (1) preparing for homeownership;
  - (2) available financing and credit analysis;

- (3) loan closing and homebuyer responsibilities;
- (4) home maintenance and loan servicing;

- (d) a certificate of successful completion of homebuyer education shall be issued to each prospective homeowner and a copy submitted to the Department.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR 92.206, and Sections 50896, 50896.1 Health and Safety Code.

**Amend Section 8208 as follows:**

**§ 8208. Affordability Requirements.**

- (a) In order to qualify under these regulations for funding as an affordable rental housing project, the project shall meet the periods of affordability specified in the following table, and shall comply with the other requirements of 24 CFR Sections 92.252, 92.255 and 92.258.

<b>Amount of HOME Assistance</b>	<b>Activity Assisted</b>	<b>Minimum Period of Affordability in Years</b>
Less than 15,000 per unit	Rehabilitation of existing rental housing	10 years
\$15,000 to \$40,000	Rehabilitation of existing rental housing	15 years
More than \$40,000	Rehabilitation of existing rental housing	20 years
Any dollar amount	Acquisition and Rehabilitation, Acquisition and or New construction of rental housing	55 years

- (b) Rent levels shall be restricted for the period of affordability set forth above at the lesser of the rent level permitted pursuant to 24 C.F.R. Section 92.252 or another rent level expressed as a percentage of area median income approved by the Department. Exceptions to this requirement may be granted for units receiving HUD Section 8 or other similar rental assistance, or where the project's continued fiscal integrity is in jeopardy due to factors that could not be reasonably foreseen.

- (~~b-c~~) Homeownership units assisted with HOME funds shall meet the requirements of 24 CFR Sections 92.254, 92.255 and 92.258. Except for owner-occupied units being

rehabilitated with HOME funds, all assistance shall be made available only to first-time homebuyers.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.252, 92.254, 92.255, 92.257, 92.258, 201.10, 203.18, 234.27, 813.102 and 888.111; Section 6932, Government Code; and Sections 50896 and 50896.1, Health and Safety Code.

**Amend Section 8209 as follows:**

**§ 8209. Tenant-Based Rental Assistance.**

~~Unless otherwise requested by the state recipient~~ Notwithstanding the requirements of ~~Section 8204, eligibility for HOME-funded tenant-based rental assistance and security deposit assistance. shall be restricted to families who maintain residence within the boundaries of the jurisdiction where the assistance is provided~~ may be used to assist tenants to reside in an eligible jurisdiction within the county where the tenant-based rental assistance funds were awarded. The state recipient shall comply with the provisions of 24 CFR sections 92.209. In all cases, assistance shall be restricted to the boundaries of the ~~state~~ county where the funds were awarded and shall continue to be the responsibility of the state recipient.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 882, and 882.209(a)(7), 42 USC 12742; and Sections 50896 and 50896.1, Health and Safety Code

**Amend Section 8210 as follows:**

**§ 8210. Application Process.**

- (a) Within a funding cycle, the Department shall issue one or more NOFAs.
- (b) Eligible applicants, defined as those that comply with the provisions in Section 8204, may submit only one application in response to a NOFA.
- (c) Applications from CHDOs shall propose only activities that are eligible to qualify as CHDO set-aside activities pursuant to 24 CFR Section 92.300(a).
- (d) The NOFA shall specify, among other things, the maximum amount of funds available to a State Recipient or CHDO under the NOFA, the activities eligible pursuant to the NOFA, the time frame for submittal of applications, the application requirement pursuant to Section 8211, the allocation of rating points pursuant to Section 8212, the matching contribution requirements pursuant to Section 8206, the value of voluntary labor as determined by HUD pursuant to 24 CFR Section 92.220(a)(8), any prohibitions on uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.
- (e) The Department shall only consider applications that are complete, as defined by Section 8211(b), and contain all the information required by Section 8211(c).

- (f) If funds are disencumbered pursuant to Section 8218, made available due to an unexecuted standard agreement or made available by HUD pursuant to 24 CFR Section 92.451, the Department may make such funds available to (1) the next highest-ranked unfunded or partially-funded application from the most recent award of funds if the applicant can demonstrate that a proposed activity can be successfully implemented and executed, or (2) through the next published NOFA pursuant to subsection (a).
- (g) In order to comply with any set-aside established by HUD or the Department, or special allocation made by HUD, the Department may do one or more of the following:
  - (1) issue a special NOFA;
  - (2) specify in each NOFA the reservation of a portion of the funds; and
  - (3) specify in each NOFA any waivers to requirements granted by HUD in connection with the funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 570.3(ee) and 92.451; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Amend Section 8211 as follows:**

**§ 8211. Application Requirements/Form.**

- (a) Application shall be made on a form made available by the Department that requests the information required by these regulations.
- (b) An application shall be deemed complete when the Department is able to determine from the information provided whether the application is eligible for rating pursuant to the requirements of Section 8212 (a).
- (c) All applications shall be required to contain the following:
  - (1) identification of the applicant;
  - (2) information on the proposed activity(ies);
  - (3) information adequate to determine whether the applicant is eligible, in accordance with Sections 8204 and 8204.1;
  - (4) information adequate to determine whether the activity is eligible, in accordance with Sections 8205 and 8210(c);
  - (5) information indicating whether the applicant or any member of its program team or project team has any unresolved audit findings or has been suspended or debarred from participation in any federal or State housing or community development program;
  - (6) information on any pending litigation affecting the applicant's ability to carry out the activity;

- (7) identification of any administrative subcontractor;
  - (8) a certification that the applicant will comply with State and federal requirements;
  - (9) a resolution by the governing board of the applicant authorizing the application and the execution of all required documents;
  - (10) information adequate to determine the experience of the applicant with other federal, State or local housing or community development programs;
  - (11) identification of all members of the program team or project team;
  - (12) information on sources and amounts of matching contributions, in accordance with Section 8206, and sources and amounts of leverage, as defined in Section 8201.
- (d) In addition to the information required by subsection (c), applications proposing programs shall be required to contain the following:
- (1) information on which member of the program team is responsible for accomplishing key administrative tasks;
  - (2) information on the projected administrative budget and sources of funds to pay for the costs of administering the program;
  - (3) information adequate to determine the experience of the applicant in administering a program to assist the same type of activity proposed in the application;
  - (4) a description of how the applicant proposes to use HOME funds;
  - (5) a copy of the guidelines to be used by the applicant for administering the program in compliance with State and federal requirements;
  - (6) information adequate to determine the feasibility of the program;
- (e) In addition to the information required by subsection (c), applications proposing projects shall be required to contain the following:
- (1) a description of the roles, financial structure and all legal relationships of the applicant, developer, owner(s), managing general partner, administrative subcontractor and all other partners in the construction project;
  - (2) information adequate to determine the experience of the applicant, developer, owner and managing general partner in developing the same type of subsidized project as proposed by the application;
  - (3) information adequate to determine the readiness of the project to proceed;
  - (4) information adequate to determine the feasibility of the proposed project, ~~including,~~

i. For applications proposing rental projects, adequate information shall include the following:

- (A) information adequate to determine the financial feasibility of the project in accordance with Section 8212(d)(3) and the Uniform Multifamily Regulations (commencing with Section 8300) and state and federal HOME requirements;
- (B) a market study, property appraisal, and a Phase I/Phase II environmental site assessment as requested by the Department. For rental rehabilitation and /or acquisition projects, lead-based paint, asbestos, and mold assessments shall be submitted instead of Phase I/Phase II site assessments.

ii. For applications proposing first-time homebuyer projects, adequate information shall include the following:

- (A) information adequate to determine the ability of the project to meet federal and state HOME requirements, including a copy of the guidelines to be used by the applicant for administering the project in compliance with State and federal requirements;
- (B) a market survey, property, appraisal, and a Phase I/Phase II environmental site assessment as requested by the Department. For first-time homebuyer projects not involving new construction, lead-based paint, asbestos, and mold assessments shall be submitted instead of Phase I/Phase II site assessments.

iii. Any document prepared pursuant to subsections (i) (B) or (ii) (B) shall be prepared by an individual or firm which:

- (1) has the appropriate license, or knowledge and experience necessary to competently prepare the report;
- (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible and complete report;
- (3) communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property, and the value and condition of the subject property; and
- (4) is an independent third party having no identity of interest with the applicant, the partners of the applicant, the intended partners of the applicant, or with the general contractor.

- (5) if applicant is a CHDO, the procedures to ensure the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1).

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.1, 92.201, 92.205, 92.209, 92.214(a), 92.252, 92.254, 92.300(a)(1), and 92.500; Section 65588, Government Code; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Amend Section 8212 as follows:**

**§ 8212. Application Selection and Evaluation.**

- (a) Applications shall not be considered for funding unless the application is received within the time frame specified in the NOFA and demonstrates that all of the following conditions exist:
  - (1) the applicant is eligible pursuant to Section 8204 and 8204.1;
  - (2) the applicant proposes at least one eligible activity and the proposed uses for the HOME funds are eligible pursuant to Section 8205 and 8210(c);
  - (3) the application is complete pursuant to Section 8211
  - (4) the total amount of funds requested for both administration and activity-specific costs does not exceed the funding allocation limit which is stated in the NOFA and any allowed increase to this limit pursuant to Section 8217;
  - (5) if applicant is a CHDO, includes procedures ensuring the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1); and
  - (6) for applications proposing projects involving acquisition of rental housing, acquisition and rehabilitation of rental housing, rehabilitation of rental housing, construction of rental housing or construction of housing for first-time homebuyers, the application demonstrates:
    - (A) that the project is financially feasible;
    - (B) site control pursuant to Section 8303;
    - (C) that there are no pending lawsuits that will prevent implementation of the project, as proposed;
  - (7) for applications proposing rental activities, the application contains documentation demonstrating that the project either complies with or is exempt from Article 34 of the California Constitution.
- (b) Each application considered for funding shall first be rated using the criteria contained in this subsection and the criteria in subsection (c) for program applications and the criteria listed in subsection (d) for project applications. Maximum possible rating points are listed

after each criterion. ~~Applications proposing programs and applications proposing projects~~ Program applications, rental project applications, and first-time homebuyer project applications shall be rated and ranked separately. All applications shall be rated on the following:

- (1) If the applicant is a city or county, the city or county's adopted housing element is in substantive compliance on the date applications are due to the Department as published in the NOFA. Newly formed cities that are not required to have an adopted housing element in compliance with general plan law shall receive full points in this category. If the applicant is a CHDO, the CHDO shall receive full points in this category. (50 points)
  - (2) Whether the application proposes activities within a jurisdiction whose formula allocation is being reallocated by the Department. (50 points)
  - (3) Whether the application proposes activities in a rural area. (50 points)
  - (4) Whether the application addresses one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD. (150 points)
- (c) Applications proposing programs shall be evaluated on these additional criteria:
- (1) Capability to operate a HOME program, as demonstrated by the following: (up to 250 points)
    - (A) Performance of the applicant in meeting federal and State HOME requirements specified in this Section in previous State HOME contracts (up to 150 points). For this criterion only, all applicants initially will be credited with 150 points. Applications will then have points deducted for performance problems under previous State HOME contracts.
      - (i) Applicants who have in the last three contracts, from prior years as defined in the NOFA, not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and
      - (ii) applicants who have not complied with monitoring and contractual requirements identified by the Department in the last 5 years as defined in the NOFA will lose up to 100 points.
    - (B) Prior experience of the applicant, as measured by implementation of HOME, and/or other local, State or federal affordable housing or community development programs during the most recent seven year period (up to 100 points):
  - (2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of

households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U. S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 450 points)

- (3) Feasibility of the program being applied for, as demonstrated by the degree to which the applicant's program guidelines reflect federal and State requirements, and the following: (up to 100 points)

- (A) for first-time homebuyer programs, the number of units which have sold in the city or county over the preceding 12 month period at a price which is affordable, given the proposed HOME assistance, to lower income families;
- (B) for rehabilitation of owner-occupied housing and rental housing programs, the number of overcrowded households by tenure and the age of the housing stock by tenure in the city or county, as reflected in U.S. Census data;
- (C) for tenant-based rental assistance programs, the overpayment by lower-income renter households as reflected in U. S. Census data.

(d) Applications proposing projects will be evaluated on these additional criteria:

- (1) Capability to develop a HOME-assisted project, as demonstrated by the following: (up to 450 points)

- (A) Performance of the applicant, developer, owner, and managing general partner in meeting federal and State HOME requirements specified in this section in previous State HOME contracts; (up to 200 points). For this criterion only, all ~~applicants applications will~~ initially will be credited with 200 points. Applications will then have points deducted for performance problems under previous State HOME contracts.

- (i) applicants, developers, owners, and managing general partners who have in the last 3 contracts, from prior years most recent five-year period as defined in the NOFA, missed deadlines for projects specified in Section 8217 will lose up to 200 points; or applicants who have not submitted required monthly, quarterly, annual, or project completion reports on time will lose up to 50 points; ~~and~~

- (ii) applicants, developers, owners, and managing general partners who have in the most recent five-year period as defined in the NOFA, made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to the Department including but not limited to that which jeopardizes the Department's investment in a project or places the Department at risk of a monitoring finding will lose up to 200 points; and;

- (iii) applicants, owners, and managing general partners who have not complied with monitoring requirements identified by the Department in the last five years will lose up to 100 points.
  - (B) Prior experience of the applicant, as measured by the implementation of HOME, and/or other local, State or federal affordable housing or community development projects during the most recent seven year period; (up to 50 points)
  - (C) Prior experience during the most recent five year period of the applicant, developer, owner, and managing general partner in developing the same type of subsidized project, in a manner consistent with the applicable funding source, as is proposed in the application. (up to 200 points)
- (2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households and by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U. S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 450 points)
  - (3) Feasibility of the project. For rental projects, feasibility will be as demonstrated by compliance with the Uniform Multifamily Regulations (commencing with Section 8300) and State and federal HOME requirements. For first-time homebuyer projects, the Department will evaluate the ability of the proposed project to meet State and federal HOME requirements. This will include but is not limited to an evaluation of the adequacy and cost reasonableness of the proposed development budget, the demonstrated market for the project, including both the assisted units, and the non-assisted units, if any, and the affordability of the project, taking into account other available financing and HOME income requirements. Projects will also earn points based on having the greatest percent of assisted units. Point values for each factor will be identified in the NOFA. (up to 200 points)
  - (4) Readiness of the project, as demonstrated by the project development plan, status of local governmental approvals, design progress and financing commitments. Point values for each factor will be identified in the NOFA. (up to 300 points)

- (5) Applications must receive at least 930 points in subsections (b) and (d) in order to be eligible for funding.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 91, and 24 CFR Sections 92.1, 92.50, 92.102, 92.204, 92.205, 92.206, 92.218, 92.250, 92.451 and 92.453; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Amend Section 8212.1 as follows:**

**§ 8212.1. Allocation by Type of Activity and Rural Location.**

- (a) HOME funds will be divided into ~~two~~ three separate allocations, one for rental projects one for programs, and one for first-time homebuyer projects with the percentage of each allocation based on the actual application demand expressed as dollar amount requested in as announced in the NOFA in response to the initial NOFA of a funding cycle. However, under the initial NOFA, in no event shall ~~either the~~ the allocation for rental projects or the allocation for programs decline below 40 percent of the total funds available, and in no event shall the allocation for first-time homebuyer projects decline below 5 percent of the total funds available.
- (b) If ~~either the~~ minimum allocation is not fully subscribed for applications submitted under the initial NOFA, the remaining funds may be:
- (i) transferred to ~~the~~ another allocation;
  - (ii) made available under a subsequent NOFA; or
  - (iii) a combination of both (i) and (ii).

Funds made available under a subsequent NOFA may be:

(A) made available on a first come-first served basis for a maximum of nine months from the application deadline under the initial NOFA, or

(B) for programs, may be divided equally among all eligible applicants requesting funds.

- (c) In making its determination of how to allocate remaining funds pursuant to subsection (b), the Department shall, at a minimum, consider:
- (i) the amount of funds remaining;
  - (ii) any remaining demand under a fully subscribed allocation;
  - (iii) the potential future demand for program funds based on expenditure information on file with the Department; and
  - (iv) the anticipated timing and amount of the initial NOFA for the next funding cycle.

- (d) Rental Pprojects will compete against rental projects, first-time homebuyer projects will compete against first-time homebuyer projects and programs will compete against programs.
- (e) At least 50 percent of HOME funds awarded will be reserved for applicants qualifying for rural points, as stated in 8212 (b) (3). However, if an insufficient number of applications that qualify for rural points are eligible for funding pursuant to 8212(c) and 8212(d)(5), the remaining rural funding reservation will be used to fund any non-rural applications that are eligible for funding.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Add Section 8212.2 as follows:**

**§ 8212.2 Deep Targeting Funds**

- a) For purposes of this section, the term “deep targeting funds” means additional funds awarded to rental projects to provide rents below the 50% of area median income rent level as set forth in the NOFA.
- b) In addition to the maximum award amount set forth in a NOFA, and subject to the provisions of this section, a NOFA may make deep targeting funds available for the purpose of reducing project rents through reduction or elimination of non-public agency debt that requires debt service payments.
- c) The NOFA shall establish the reduced rent levels required in order for a project to be eligible to receive deep targeting funds.
- d) As a result of the reduction in mandatory debt service, all rents shall be maintained at the area median income levels proposed in the HOME application for a minimum of 55 years pursuant to a HOME regulatory agreement or a regulatory agreement held by another financing agency.
- e) The following projects shall not be eligible to receive deep targeting funds.
  - i. Projects proposing to use nine percent Low Income Housing Tax Credits.
  - ii. Rental rehabilitation projects that are not requesting HOME funds for acquisition.
- f) Deep targeting funds shall be allocated only to rental housing projects ranking high enough to be funded pursuant to 8212(b). If the demand for deep targeting funds exceeds the amount made available in the NOFA, projects will be rated and ranked for deep targeting funds as follows:
  - i. The higher the percentage of HOME units restricted at or below the deep targeting rent levels set in the NOFA, the more points that will be awarded; and
  - ii. The lower the average rent expressed as a percentage of area median income, the more points that will be awarded.
  - iii. If a project requesting deep targeting funds does not score high enough on the deep targeting rating factors to receive deep targeting funds, the project will be evaluated

pursuant to Section 8212(b) using the rents that are proposed at the regular maximum HOME loan amount, rather than the deep targeting HOME loan amount.

- g) Applicants requesting funds for deep targeting shall submit two sets of documents as requested in the application. One set of documents shall reflect rent levels and project financials if the project is funded at the regular maximum HOME funding level, and one set of documents shall reflect rent levels and project financials if the project is funded with deep targeting funds. Except for differences attributable to reduced non-public agency debt, the two project scenarios shall be the same. Although the project unit mix may change with deep targeting funds, the total number of units in the project shall not change. Among the HOME-assisted units, no more than four different rent levels expressed as a percentage of area median income shall be used for each bedroom size.
- h) In rating and ranking applications pursuant to subdivision (e), projects will only be compared to projects in counties with similar HOME median income limits as set forth in the NOFA. Initially, fifty percent of the available deep targeting funds shall be allocated to projects in counties with HOME income limits lower than the identified median income limit in the NOFA, and fifty-percent of the funds shall be awarded to projects in counties with HOME income limits higher than the identified median income limit in the NOFA. Unallocated funds from one group will be made available to the other group.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.201, 92.206, 92.218, 92.252, 92.257; and Sections 50896 and 50896.1, Health and Safety Code.

### **Amend Section 8213 as follows:**

#### **§ 8213. Conditional Reservation of Funds.**

- (a) The Department will rate, rank and issue conditional reservations of funds for applications based on its review of all of the eligible activities for which funds are requested in the application. Rating scores for each of the factors set forth in Section 8212(b), (c) and (d) will be totaled by the Department. Those project applications which receive the minimum required number of points, as specified in 8212(d), and all eligible program applications will receive conditional reservations in the order in which they are ranked within their respective allocations pursuant to 8212.1 with the higher point score funded first. Those applications which are to be funded wholly from any set-aside, because all proposed activities are eligible to qualify as set-aside activities, shall be funded first based on their score within their respective allocations. Once the set-aside has been achieved, all remaining applications will be funded based on their score relative to all other remaining applications in their respective allocations.
- (b) In the case of a tied score, the application demonstrating the highest poverty level shall receive the higher ranking.
- (c) In the event there are insufficient funds to fund an applicant's whole program, the applicant may be offered the amount of funds available, provided it is sufficient to complete a portion of the application which, if evaluated separately, would have been awarded funds.

- (d) Applications shall be funded subject to the availability of funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

**Amend Section 8216 as follows:**

**§ 8216. Reporting and Recordkeeping.**

**(a) Reporting Requirements**

- (1) Upon execution of the standard agreement required by Section 8214, and no later than 10 days following the last day of the month, recipients of project funds shall submit a monthly status report, and, for projects currently under construction, a monthly labor compliance certification. The State Recipient or CHDO shall continue to submit the monthly status report until the final project completion report is accepted in the federal disbursement and information system.
- (4 2) Upon execution of the standard agreement and, at a minimum, no later than 30 days after the end of each calendar quarter until the final project completion report is accepted in the federal disbursement and information system, State Recipients and CHDOs shall submit to the Department a performance report which shall include the following information:
  - (A) activities undertaken to implement the local program and to meet milestones contained in the standard agreement;
  - (B) anticipated activities in the next quarter to implement the local program and to meet milestones contained in the standard agreement;
  - (C) problems in implementing the program or complaints received during the reporting period and actions taken to resolve such problems and complaints;
  - (D) financial information related to expenditures of HOME funds and activity in the local account.
  - (E) any additional information which may be requested by the Department to ensure compliance with federal requirements.
- (2) State recipients, CHDOs, or other borrowers shall submit to the Department an annual performance report. The annual performance report shall cover the period from July 1 to June 30 and shall be submitted on July 1 of each year and not later than July 31 of each year pursuant to Section 8214(a)(4)(C). The report shall include information and documentation which is necessary to meet record keeping and reporting requirements pursuant to 24 CFR Section 92.508(b).

**(b) Fiscal and Programmatic Requirements**

- (1) State recipients and CHDOs shall maintain records as described in 24 CFR Sections 92.508(a)(2), (a)(3), (a)(5), and (a)(6). These records shall be retained for

the periods of time specified in 24 CFR Section 92.508(c). State recipients and CHDOs shall make all program records available to the Department for inspection and review and shall provide all program records to the Department upon request.

- (2) At any time during the operation of the local HOME program, the Department may perform or cause to be performed a financial audit pursuant to 24 CFR Section 92.506 of any and all phases of program operations. At the Department's request, the State Recipient or CHDO or other borrower shall provide, at its own expense, a financial audit prepared by a certified public accountant.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.504, 92.506, 92.508; and Sections 50896 and 50896.1, Health and Safety Code.

**Amend Section 8217 as follows:**

**§ 8217. Project Deadlines.**

- (a) For purposes of this section, the following terms have the following meanings:
  - (1) "Contract" means the standard agreement required by section 8214. The contract shall designate each activity listed therein as either a "project" or a "program".
  - (2) "Contractor" means a CHDO or State Recipient that has executed a contract with the Department.
  - (3) "Expenditure" means the Department has received a valid disbursement request for the funds.
  - (4) "Performance points" means those points made available pursuant to Section 8212(d) (1) (A).
  - (5) "Project" means an activity for which, at the time of application, there is an identified site and an identified borrower. No substitution of the site shall be permitted after the submission of an application to the Department.
  - (6) "Program" means an activity for which, at the time of application, there is no identified site or no identified borrower.

**(e) Project Deadlines**

- (1) All projects shall meet the following deadlines:
  - (A) the State Recipient or CHDO shall obtain all necessary permanent project financing, including the permanent financing for the required period of affordability within 12 months of the date of the award letter;
  - (B) all projects shall be set up in the federal disbursement and information system no later than 17 months after the date of the award letter;

(C) all construction loan closings shall occur no later than 20 months after the date of the award letter, with the exception of self-help projects, for which construction loan closings must occur no later than 23 months after the date of the award letter. Construction loan closing is defined as the recordation of all construction financing loan documents, including, as applicable, the HOME deed of trust and HOME regulatory agreement;

(D) all projects shall be completed within 36 months of the date of the award letter, as evidenced by the filing of a Notice of Completion; and

(E) all expenditures shall be made within 40 months of the date of the award letter.

(2) If a project fails to meet one or more of these timeframes outlined in (1) above, the next application for a project involving the applicant, developer, owner or managing general partner submitted ~~by the contractor~~ in response to a NOFA having an application deadline after the missed project deadline/s shall receive a performance penalty pursuant to section 8212(d) (1) (A).

(3) If a project fails to meet three (3) of the timeframes outlined in (1) above: the contractor shall be:

(A) ineligible to apply for a project in any NOFA having an application deadline following the third missed deadline until the project is completed, occupancy is obtained and all expenditures are made and all necessary HOME funds are drawn; and

(A) the next application for a project ~~submitted by the contractor~~ involving the applicant, developer, owner, or managing general partner shall receive a performance penalty.

(dc) An exception to the project requirements of this section may be requested and provided at the Department's sole discretion when it is determined that violation was clearly outside of the control of the ~~Contractor~~ applicant, developer, owner or managing general partner. This provision does not apply to Subsection 8217(b) (3) (A).

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.454(a) (2) and 92.500(d); and Sections 50896 and 50896.1, Health and Safety Code.